

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PRAIRIE STATE GENERATING COMPANY,
 LLC,)
)
 a Delaware Corporation,)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
 an administrative agency of the State of Illinois,)
)
)
)
 Respondent.)

PCB No. 25-11
 (Permit Appeal – Air)

NOTICE OF FILING

To:

Division of Legal Counsel
 Illinois Environmental Protection Agency
 1021 North Grand Avenue East
 P.O. Box 19276
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Illinois Pollution Control Board, Attn: Clerk
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 Chicago, IL 60605
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 Illinois Attorney General's Office
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PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Pollution Control Board the attached POST-HEARING BRIEF OF PRAIRIE STATE GENERATING COMPANY, LLC, copies of which are hereby served upon you.

Dated: November 12, 2024

Respectfully Submitted,

/s/ Robert A.H. Middleton

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Company, LLC*

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**POST-HEARING BRIEF OF
PRAIRIE STATE GENERATING COMPANY, LLC**

Pursuant to the October 29, 2024 Hearing Report, Prairie State Generating Company, LLC (“Prairie State”) hereby submits is Post-Hearing Brief.

Prairie State initiated this action on August 30, 2024, filing a Petition for Hearing requesting that the Board require Illinois EPA to take final action on Prairie State’s pending Clean Air Act Permit Program (“CAAPP”) permit application. Prairie State timely submitted a complete CAAPP permit application to Illinois EPA over thirteen years ago. Illinois EPA has at all times had the legal authority to take final action on Prairie State’s CAAPP permit application. However, to-date, Illinois EPA has not taken such action on the application. While Prairie State is authorized to operate until such time as Illinois EPA takes final action on the application, relief from the Board is necessary to ensure that Illinois EPA takes final action on Prairie State’s CAAPP permit application as expeditiously as possible.

The Board's hearing in this matter was held on October 29, 2024 at the Washington County Board Room in Nashville, Illinois (the "Hearing"). *See* October 29, 2024 Hearing Report. In accordance with the Hearing Officer's October 17, 2024 Order, the Hearing was limited to the issue of timing that it would take for Illinois EPA to take action on Prairie State's CAAPP permit application, as no other issues of fact or law are in dispute between the parties. Notably, both Prairie State and Illinois EPA agree that Prairie State is, and at all times has been, lawfully authorized to operate its facility until Illinois EPA takes final action. *See* Illinois EPA Answer, at 3.

At the Hearing, Illinois EPA offered the pre-written testimony of William Barr, manager for the Agency's Bureau of Air's Permit Section. Mr. Barr testified as to the Illinois EPA's process for processing and considering a CAAPP permit application to justify the Agency's position that it will take two years to reach final action on Prairie State's CAAPP permit application. Prairie State did not dispute Mr. Barr's testimony.

Ross Bunton, Prairie State's Director of Environmental, also testified at the Hearing. Mr. Bunton reiterated Prairie State's initial request for the Board to enter an order requiring that Illinois EPA take final action on Prairie State's CAAPP permit application and issue a draft CAAPP permit within one year of the Board's order. However, Mr. Bunton acknowledged that Prairie State agrees with Illinois EPA that the technical review, drafting and negotiation of a CAAPP permit for a large stationary source like Prairie State's facility is an inherently lengthy and complex process. Mr. Bunton further acknowledged that the statutorily required review process following issuance of a draft CAAPP permit could take an additional one year to complete. As a result, Mr. Bunton represented at the Hearing that there is parity between Prairie State's and Illinois EPA's position on timing for Illinois EPA to take final action on the CAAPP permit application. Illinois EPA did not dispute Mr. Bunton's testimony.

There are no factual disputes between the parties to this matter, as evidenced by both Illinois EPA's Answer to Prairie State's Petition for Hearing and each party's testimony at the Hearing. An order by this Board is necessary to ensure that Illinois EPA is required to take final action on Prairie State's CAAPP permit application to prevent further delay in Illinois EPA carrying out its statutorily required duty. Accordingly, Prairie State respectfully requests that the Board enter a final order requiring Illinois EPA to take final action on Prairie State's pending CAAPP permit application by a specific deadline after Prairie State has submitted an update to its application. Ultimately, Prairie State defers to the Board's expertise in determining the deadline that should be set for Illinois EPA to take final action.

Dated: November 12, 2024

Respectfully Submitted,

/s/ Robert A.H. Middleton

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*Attorneys for Prairie State Generating
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CERTIFICATE OF SERVICE

I, Robert Middleton, certify that on this 12TH Day of November, 2024:

I have electronically served a true and correct copy of Prairie State's POST-HEARING BRIEF by electronically filing with the clerk of the Illinois Pollution Control Board and by e-mail upon the following persons.

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My email address is Robert.Middleton@afslaw.com.

The number of pages in this transmission is 6.

This e-mail transmission took place before 5:00 pm.

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